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**Subject:** ACE Rule

FYI (Sorry if you have already seen it.)

This came out this morning.

Taim.

<https://insideepa.com/daily-news/dc-circuit-vacates-trump-epa-s-ace-power-plant-greenhouse-gas-rule>

## D.C. Circuit Vacates Trump EPA's ACE Power Plant Greenhouse Gas Rule

January 19, 2021

The U.S. Court of Appeals for the District of Columbia Circuit has vacated EPA's Affordable Clean Energy (ACE) power plant greenhouse gas rule, handing the agency a major defeat on the penultimate day of the Trump administration while easing the incoming Biden team's ability to rewrite it.

A three-judge panel of the court in a split [Jan. 19 opinion](#) vacated and remanded the ACE rule to EPA, while also vacating the agency's separate action extending compliance timelines for all rules issued under section 111(d) of the Clean Air Act. That section provides the authority for ACE and its predecessor, the Obama EPA's broader Clean Power Plan (CPP).

Further, the court also denied efforts by coal sector firms to challenge EPA's underlying authority to regulate power plants' GHGs under section 111.

The panel's opinion was fully joined by Judges Patricia Millett and Nina Pillard, both of whom were appointed by former President Barack Obama. It was partially joined by Judge Justin Walker, who was appointed by President Donald Trump.

The panel found that ACE, as well as the repeal of the CPP, "hinged on a fundamental misconception of" section 111(d). "In addition, the ACE Rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious."

A separate opinion by Walker says he believes EPA was "required to repeal" CPP, but that it was "wrong to replace it with provisions promulgated under" section 111, adopting arguments by free-market groups that the agency cannot regulate power plants' GHGs under that section because it already regulates the sector's air toxics under section 112.

This is a breaking news story. *Inside EPA* will have further in-depth coverage later.

<https://news.bloomberglaw.com/environment-and-energy/epas-industry-friendly-climate-rule-struck-down-by-court>

## EPA's Industry-Friendly Climate Rule Struck Down by Court (1)

Jan. 19, 2021, 9:14 AM; Updated: Jan. 19, 2021, 9:34 AM

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- Affordable Clean Energy rule replaced sweeping Obama plan
- States, green groups questioned legality under Clean Air Act

The EPA's industry-friendly climate rule for power plants violates federal law, the D.C. Circuit ruled Tuesday in a searing defeat for the Trump administration's deregulatory agenda.

The U.S. Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy rule and remanded it to the Environmental Protection Agency, giving the incoming Biden administration a clean slate for regulating emissions from the power sector.

The decision undercuts Trump officials' bid to leave a legacy of deregulation, tossing one of the administration's highest-profile replacements of aggressive Obama-era environmental rules.

The EPA, under former President Barack Obama, crafted the far-reaching Clean Power Plan to reduce greenhouse gas emissions across the power sector. The plan never took effect; the Supreme Court froze its implementation, and the EPA quickly dismantled and replaced the rule after President Donald Trump took office.

### 'No Basis'

Tuesday's decision rejects the Trump EPA's position that the Clean Air Act only allows the agency to craft emissions restrictions that apply directly "at the source" of power plants. The position was a departure from the Obama administration's sector-wide approach to reducing emissions.

"In other words, the EPA reads the statute to require the Agency to turn its back on major elements of the systems that the power sector is actually and successfully using to efficiently and cost-effectively achieve the greatest emission reductions," the court said.

It added that there is "no basis—grammatical, contextual, or otherwise—for the EPA's assertion."

Judge Justin R. Walker, a Trump appointee, dissented in part from the ruling, rejecting the Trump administration's rule on other grounds. He said the EPA has no authority in the first place to regulate power plants under the Clean Air Act provision in question.

### Eight Hours of Arguments

The ruling comes after the D.C. Circuit in October heard more than eight hours of oral arguments over the Trump administration's rollback and replacement rule.

Dozens of environmental groups, clean energy companies, and a coalition of left-leaning states argued that the repeal of the Clean Power Plan and the replacement rule were unlawful. Other energy companies and right-leaning states backed the Trump administration in court.

The three-judge panel, which included two Obama appointees and one Trump appointee, worked through a series of major legal questions, including whether the Clean Air Act requires a narrow, site-specific approach to emissions reductions from power plants—or allows the EPA to take a holistic, sector-wide approach.

The incoming Biden administration has pledged to act aggressively on climate change, and is poised to craft a new EPA rule for power plant emissions. Environmental lawyers expect new agency leaders to opt for a broad, Clean Power Plan-style approach, but have cautioned that any ambitious regulation will likely invite a skeptical eye from the U.S. Supreme Court's new 6-to-3 conservative majority.

The case is Am. Lung Ass'n v. EPA, D.C. Cir., No. 19-1140, 1/19/21.

(Adds details from opinion.)

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